IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.07.2015

Pronounced on : 14-07-2015

Coram :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case Nos. 1369 and 1370 of 2014
and
M.P. No. 1 of 2014(2 Nos)

S. Murugabarathy .. Petitioner in both the Criminal Revision Cases

Versus

State by
Deputy Superintendent of Police
EOW-II/HQ
Chennai - 600 040 .. Respondent in both the Criminal Revision Cases

Crl.R.C. No. 1369 of 2014:- Criminal Revision Case filed under Section 397 and 401 of Criminal Procedure Code praying to set aside the Order dated 05.09.2014 passed in Crl.R.C. No. 20 of 2011 on the file of the learned II Additional Sessions Judge, Chennai reversing the order dated 25.04.2008 passed in Crl.M.P. No. 496 of 2008 in C.C. No. 11459 of 2002 on the file of the Chief Metropolitan Magistrate, Egmore, Madras.

Crl.R.C. No. 1370 of 2014:- Criminal Revision Case filed under Section 397 and 401 of Criminal Procedure Code praying to set aside the Order dated 05.09.2014 passed in Crl.R.C. No. 19 of 2011 on the file of the learned II Additional Sessions Judge, Chennai reversing the order dated 25.04.2008 passed in Crl.M.P. No. 280 of 2008 in C.C. No. 11457 of 2002 on the file of the Chief Metropolitan Magistrate, Egmore, Madras.

For Petitioner : Mr. R. Shanmugasundaram,
Senior Counsel
for Mr. E.J. Ayyappan
in both tthe Criminal Revision Case

For Respondent : Mr. Shanmugavelayudham
Public Prosecutor
Assisted by Mr. V. Arul
Government Advocate (Crl.side)

COMMON ORDER

The petitioner in these Criminal Revision Cases are one and the same. The learned Senior counsel appearing for the revision petitioner as well as the learned Public Prosecutor have advanced common argument in both the cases. That apart, the issues involved for consideration in both the Criminal Revision Cases are common and identical and therefore, both the Criminal Revision Cases are taken up for hearing together and they are disposed of by this common order.

2. The case of the prosecution is that one V.R. Srinivasan has given a complaint stating that he had deposited Rs.16,100/- and Rs.18,200/- with RBF Benefit Fund, T. Nagar Branch, however, even after maturity of the deposits made by him on 08.06.1999, the RBF Benefit Fund did not repay the maturity amount. On the basis of such complaint, a case in Crime No. 1066 of 1999 for the offence under Section 409 read with Section 34 of IPC came to be registered on 24.02.1999. After investigation, charge sheets were filed on 03.05.2002 against A-1 to A-17 which was taken on file as C.C. No. 11459 of 2003 and another charge sheet against A-1 to A-22 which was taken on file as C.C. No. 11457 of 2002. In both the charge sheets, the revision petitioner was arrayed as A-12.

3. Pending trial, the revision petitioner filed Crl.M.P. Nos. 496 of 2008 and 280 of 2008 in C.C. No. 11459 of 2002 and 11457 of 2002 respectively for discharging him from the criminal prosecution. Such applications for discharge were allowed by the learned Chief Metropolitan Magistrate by separate order dated 25.04.2008. Aggrieved by the same, the State has preferred Crl.R.C. No. 20 and 19 of 2011 respectively before the learned II Additional Sessions Judge, Chennai. The Appellate Court, by an order dated Order dated 05.09.2014 allowed the Criminal Revision Cases filed by the prosecution by setting aside the order of the trial Court. As against the order dated 05.09.2014 in Crl.R.C. Nos. 20 and 19 of 2011, the revision petitioner has come forward with these two Criminal Revision Cases.

4. The trial Court discharged the revision petitioner on the ground that the revision petitioner has not attended the Board meetings of the company during the offence period and he has signed any cheque in the capacity of Director. It was further pointed out that the revision petitioner attended only two board meetings, that too, before the date of commission of offence. Being a student, the revision petitioner has attended the said two meetings on Sunday. It was also pointed out that none of the witnesses cited in the above case have implicated the revision petitioner either directly or indirectly to the offence complained of. Therefore, the trial court pointed out that the charge of conspiracy against the revision petitioner is not proved by production of a prima facie evidence. Therefore, the trial Court allowed the petition for discharge filed by the revision petitioner.

5. The findings rendered by the trial court have been overturned by the Appellate Court at the instance of the prosecution by holding that the revision petitioner was physically available in India during the relevant period of sanctioning of the loan and the passport record of the respondent/accused shows that he had been in India from Australia, Singapore etc., on many occasion and visited the company as a Director. Therefore, the revision petitioner

cannot now contend that he was absent from the day to day affairs of the management and consequently he cannot be blamed for not questioning the act of other Directors in granting loans to A-16 and A-17. The appellate Court also found that the revision petitioner/A-12 is one of the Directors of RBF Nidhi Company and the said company mobilised Rs.400 crores from the public depositors. While dealing with public funds, the company ought to have sanctioned loans with proper scrutiny and with the approval of the other Directors. When A-1 entered into a building agreement on 15.07.1996 for purchasing a commercial space in the name of the revision petitioner/A-12, it cannot be said that the revision petitioner/A-12 did not know the affairs of the company. By holding that the revision petitioner/A-12 is equally liable and responsible for the liability of the company, the Appellate Court set aside the order of discharge passed by the trial Court.

6. The learned Senior counsel appearing for the petitioner would contend that Royapettah Benefit Fund Limited (in short RBF) was registered as a Mutual Fund in July 1983 and it was subsequently declared as a Nidhi company in 1988 by the Central Government as per Section 620-A of The Companies Act, 1958. The shares of the company are not offered to the public for subscription, but allotted to those who desire to take advantage of the benefits offered for depositing or borrowing money. According to Reserve Bank of India guidelines, a Nidhi company can only transact with its members.

7. In so far as the discharge of the revision petitioner, the first and foremost ground raised by the learned Senior counsel for the petitioner is during the relevant period of the alleged offence with regard to these cases, there was no transaction regarding mobilisation of deposit from public and also for offering interest upto 24% to depositors. Further, during the alleged offence period from September 1993 to September 1995 (in C.C. No. 11457 of 2002) and September 1994 to May 1995 (in C.C. No. 11459 of 2002), the revision petitioner was a student and he did not take part in the day to day affairs of the management of RBF. According to the learned Senior counsel for the revision petitioner, the revision petitioner studied in Crescent Engineering College between June 1990 and May 1994 and thereafter he went to Western Sydney, Australia to pursue Master of Business Administration between 1994 to January 1996 and on 10.04.1996, he was conferred with the Masters Degree. After completing Master Degree, he obtained an employment visa in Singapore and worked in Singapore upto September 1997. Finally, he migrated to Australia with a proper work permit issued by the Australian Immigration Authorities and he was working in Australia full time upto January 2001. All these facts are supported by passport entries and therefore, it cannot be said that the revision petitioner engaged himself in the day to day activities of the company. Further, the whole case of the prosecution is that loan was not sanctioned to A-16 and A-17 with the sanction of other Directors of the Board. When the revision petitioner did not actively engage himself in the day to day affairs of the company, implicating him as an accused is not justified. There is no specific overt act attributable against the revision petitioner that he had signed cheques or participated in the day to day affairs of the Management. As per Article 38 of the Articles of Association of the

company and the notification dated 04.12.1995 issued by the Ministry of Finance, Department of Company Affairs, the conditions by which loans are to be disbursed has been prescribed in a specified manner as per which the property of the Nidhi Company has to be dealt with. As per the notification, loans can be granted either against security of immovable property or any other security. This came in to force from 04.12.1985. Whereas, the offence period, even according to the prosecution in both the cases, was prior to this period. It is further contended that the father of the petitioner namely Subramaniam (A-1) became a Director of RBF during 1986 and subsequently he became the Chairman of RBF Nidhi Company during 1987. As per the amendments brought to the Articles of Association in the meeting held on 13.05.1990, management of the company vests with the Board of Directors.

8. The learned senior counsel for the petitioner would further submit that according to the prosecution, the Chairman and Managing Director of the company (A-1) in connivance with other accused/Directors of the company have acted illegally in fragrant violation of the Articles of Association of the Company while dealing with the property of the company knowing fully well the inherent risks involved in it. In this context, two cases have been filed against the company which culminated in C.C. No. 11459 of 2012 relating to alleged embezzlement of a sum of Rs.26 crores given as loan to A-16, Pradeep Kothari during the period between September 1994 to May 1995. In the other case namely C.C. No. 11457 of 2002, it is alleged that a sum of Rs.70 crores has been given to A-17 J.M. Pandey during the offence period September 1993 to September 1995. There is also another case filed in C.C. No. 12027 of 2003 in which the revision petitioner is not an accused. In the said case in C.C. No. 12027 of 2003, a charge sheet was filed wherein it was clearly stated that the accused in these two cases have not acted in any detrimental to the interest of the company as they are not directly involved in the day to day affairs of the management. By pointing out the above charge sheet, the learned Senior counsel for the petitioner would contend that in the present cases namely in C.C. No. 11459 and 11457 of 2002 respectively, it was alleged that loan was sanctioned without obtaining security in an arbitrary manner which is contrary to the charge sheet filed in C.C. No. 12027 of 2003.

9. It is further submitted by the learned senior counsel for the petitioner that it is alleged that A-1 and A-2 with an intention to defraud the members of the company have entered into a criminal conspiracy with A-16 and A-17 and committed the acts of criminal breach of trust. According to the learned senior counsel for the petitioner, even as per the prosecution, the period of offence alleged is between September 1994 to May 1995 in C.C. No. 11459 of 2002 and between September 1993 to September 1995 in C.C. No. 11457 of 2002 respectively. The collusion or criminal conspiracy is alleged only between A-1 and A-2 on the one side and A-16 and A-17 on the other side. There is no material made available to connect the A-12 in the criminal case. No where it was even mentioned that A-12 had connived with any other accused. Even according to the prosecution, A-12 attended the board meeting on

04.07.1993 and 11.07.1993 which is admittedly prior to the relevant offence period. The attending the meeting of the Board by A-12 that too on a Sundays, has nothing to do with the charge that a sum of Rs.26 crore and 70.3 crore has been disbursed as loan to A-16 and A-17 respectively. The prosecution implicated the revision petitioner/A-12 on the ground that an application form unsigned and undated was kept in the custody of the accused persons so as to include A-16 in the Nidhi as a Member at a later stage. Thus, A-12 came to be implicated on surmises that A-16 would become a member of the Nidhi at a later stage and he has nothing to do with the offence mentioned in the charge sheet. The revision petitioner also came to be implicated on the ground that on 17.07.1996, A-1 entered into a builders agreement with A-16 for purchase of commercial space at Moolchand Towers in the name of his son viz., A-12, revision petitioiner herein. However, the prosecution did not take into account that such agreement of sale itself was not given effect to and it was cancelled and therefore also, the implication of the revision petitioner/A-12 in the criminal prosecutionh is unnecessary. Yet another generic charge made against the revision petitioner is that A-3 to A-16, all of them are Directors of the company, have engaged themselves in criminal conspiracy illegally by which they did not interfere with the decisions taken by A-1 and A-2 and therefore they are guilty of abatement of commission of offence by A-1 and A-2. It is the further charge against the accused that A-16 and A-17 have abetted and aided A-1 to A-15 to dishonestly use the funds of the company. In other words, the prosecution assumed and presumed that A-12, as one of the Directors, did not question or interfere with the decision taken by the A-1 and A-2 to grant loan amount to A-16 and A-17 to the detriment of the funds of the company, therefore, according to the prosecution, the accused are liable to be prosecuted. As per the version of the prosecution, the loan amount was sanctioned to A-16 and A-17 without the consent or knowledge of the other Directors by A-1 and A-2, which is evident that the petitioner/A-12 has no knowledge about the transaction between A-1 and A-2 and A-16 and A-17 and consequently implicating the revision petitioner is unnecessary. Therefore, the learned senior counsel for the revision petitioner prayed for setting aside the order passed by the appellate Court.

10. In support of his contention, the learned Senior counsel for the revision petitioner relied on the decision of the Honourable Supreme Court rendered in the case of GHCL Employees Stock Option Trust vs. India Infoline Limited reported in (2013) 4 SCC 505, Para No.18 to show that when there are several persons implicated as accused, there should be specific allegation against each of the accused indicating the role played by them in the commission of offence and the allegations should not be generic and vague.

11. The learned Senior Counsel also relied on the decision of this Court rendered in (B. Jagadeesh and others vs. The Deputy Superintendent of Police, EOW-II, Namakkal) reported in (2011 (2) Madras Weekly Notes (Criminal) 494, para No.23 at Page No.506 to contend that there can be no vicarious liability fastened on the

Directors of the company for the offence committed by the company for want of any penal provision making the Directors also vicariously liable for punishment.

12. Lastly, the learned Senior Counsel for the petitioner relied on an unreported decision of this Court rendered on 17.09.2010 in Crl.O.P. (MD) No. 1646 of 2010 etc., in the case of (T.S. Muthiah vs. The State through the Dy. Superintendent of Police, Economic Offence Wing, Tirunelveli) wherein it was observed that where Tamil Nadu Co-operative Societies Act did not hold the Director responsible for day to day affairs of the society, such persons could not be held liable as per the bye-laws of the society. When once it is seen that the Director and President have nothing to do with the day to day affairs of the society, the allegations of tampering with records and misappropriation of funds are untenable.

13. Relying on the above decisions to this case, the learned Senior counsel for the revision petitioner would contend that the Appellate Court did not take note of the fact that the revision petitioner was a student studying in college during the relevant period and he was not in active participation of the affairs of the company, while so, he cannot be implicated as an accused on the charge that the other Directors have indulged in criminal conspiracty and that he is guilty of not questioning the decision taken by the other Directors.

14. On the contrary, the learned Public Prosecutor appearing for the respondent would contend that the petitioner is one of the Directors in the company and he is equally responsible for the misfeasance or malfeasance committed by the other Directors of the Company. The petitioner had attended the Board meetings of the company twice and participated in the affairs of the company. When the other directors have indulged in a criminal conspiracy and sanctioned loan without following the procedures or without consulting the other Directors of the company, the revision petitioner, as one of the Directors, ought to have questioned such decision. The prolonged silence on the part of the revision petitioner in not interfering with such a decision taken by the other Directors of the Company is a matter to be examined at the time of the trial. Therefore, the learned Public Prosecutor prayed for dismissing the Criminal Revision Case.

15. I heard the learned senior counsel for the revision petitioner, the learned Public Prosecutor appearing for the respondent and perused the orders passed by both the courts below.

16. The whole case of the prosecution, during the relevant offence period, A-1 and A-2 with a criminal intention and conspiracy have sanctioned loan in favour of A-16 and A-17 in the present case without the knowledge, consent and concurrence of the other Directors which proved detrimental to the functiioning of the company. It is also the case of the prosecution that such an unilateral decision taken by A-1 and A-2 has not been questioned by

the other Directors, including A-12 and by reson of their non-interference with such decision, they are also guilty of the offence complained of. It is the specific case of the prosecution that A-1 has entered into a builders agreement with A-16 on 17.07.1996 and the agreement was executed in the name of the revision petitioner/A-12 for purchase of commercial space at Moolchand Towers. While so, it cannot be said that the petitioner is not a director of the company and he has no role to play in the day to day affairs of the company.

17. According to the learned senior counsel for the petitioner, the loan amount was sanctioned by A-1 and A-2 to A-16 and A-17 without the consent or knowledge of the other Directors which itself is evident that the petitioner/A-12 has no knowledge about the transaction between A-1 and A-2 and A-16 and A-17 and consequently implicating the revision petitioner is unnecessary. Further, the revision petitioner studied in Crescent Engineering College, Vandalur, Chennai between June 1990 and May 1994 and thereafter he went to Western Sydney, Australia to pursue Master of Business Administration between 1994 to January 1996. On 10.04.1996, the revision petitioner was conferred with the Masters Degree. After completing Master Degree, he obtained an employment visa in Singapore and worked in Singapore upto September 1997. Finally, he migrated to Australia with a proper work permit issued by the Australian Immigration Authorities and he was working in Australia full time upto January 2001. When these facts are supported by passport entries, it cannot be said that the revision petitioner engaged himself in the day to day activities of the company. Merely because the revision petitioner attended the meeting of the Board for two days on Sunday, it will not be a ground for implicating him in a transaction that took place between A-1 and A-2 and A-16 and A-17. As regards the builders agreement dated 17.07.1996, the learned Senior counsel for the revision petitioner would submit that it was not given effect to and it stood cancelled, besides that it has nothing to do with the offence period.

18. The period of offence said to have been committed by the accused in these two cases was from September 1993 to September 1995 (in C.C. No. 11457 of 2002) and September 1994 to May 1995 (in C.C. No. 11459 of 2002). Admittedly, as regards the revision petitioner is concerned, from June 1990 and May 1994 he pursued his B.E., Degree with Crescent Engineering College, Vandalur, Chennai and between 1994 to 1996, he went to Western Sydney, Australia to pursue Master of Business Administration. Therefore, during this period, it cannot be said that the revision petitioner/A-12 attended to the day to day affairs of the company. It is not the case of the prosecution that during the offence period, the revision petitioner had issued any cheques or attended to the administration of the business of the company. When the case of the prosecution itself is that the A-1 and A-2 entered into a criminal conspiracy and sanctioned loan in favour of A-16 and A-17 without the knowledge and consent of the other Directors, implicating the revision petitioner on this ground is unnecessary. Merely because the revision petitioner attended the Board meeting twice on 04.07.1993 and

11.07.1993, that too on Sunday, that cannot be a ground to hold that he involved himself in the day to day affairs of the company or it can be co-related or has any nexus to the offence complained of. There is no proof to show that in the meetings attended by the revision petitioner on 04.07.1993 and 11.07.1993, any decision was taken for grant of loan in favour of A-16 and A-17 or any other decision was taken which proved to be detrimental to the interest of the funds of the company. The charge itself is that loan was sanctioned to A-16 and A-17 by A-1 and A-2 to the detriment to the funds of the company without any approval of the other Directors of the company. When that be so, the question of the petitioner being liable for such transaction does not arise. There is no evidence to show that the revision petitioner is directly involved in such transaction or he is liable or responsible for the affairs of the company. Even in the charge sheet, there is no specific overt act attributed against the revision petitioner warranting the revision petitioner to be impleaded as an accused in the criminal case.

19. As regards the builders agreement entered into on 17.07.1996 by the first accused in the name of the revision petitioner/A-12, it is brought to the notice of this Court the said agreement was not acted upon and it was cancelled by the first accused. Therefore, such allegations made by the prosecution cannot be pressed into service at this stage. It is also an accepted case that the agreement itself was executed much later to the relevant offence period and therefore it has no effect on the revision petitioner.

20. It is seen from the records that there is no evidence made available to prove to nexus or direct link between the revision petitioner towards the offence complained of. For implicating the revision petitioner as an accused, there must be some evidence in the form of a prima facie evidence, which is missing in this case. It is on this ground that the trial court discharged the revision petitioner from the purview of criminal prosecution. The trial court clearly pointed out that on the basis of the documentary evidence produced by the revision petitioner such as educational testimonials, passport entries, degree conferred on him by the educational institutions, it cannot be said the revision petitioner could have involved himself in the day to day affairs of the company. The trial Court also taken note of the period during which the revision petitioner pursued his Master of Business Administration at Sydney, Australia and the work permit issued to him by the Australian Immigration Authorities. However, the Appellate Court, on an erroneous appreciation of the facts reversed such findings rendered by the trial court.

21. During the course of argument, learned Public Prosecutor made reference to Section 543 of The Companies Act to contend that the revision petitioner is liable to be prosecuted criminally. Section 543 of The Companies Act has no application to the case on hand. Section 543 deals with the power of the Tribunal to assess damage against the delinquent Directors at the time of

winding up of the company. By virtue of Section 543 of said Act, the Tribunal was empowered to examine in to the conduct of the person, director, manager, liquidator or officer and to compel them to repay or restore the money so misappropriated or retained by such officer prior to the winding up of the proceedings. In the present case, the charge against the accused relates to criminal conspiracy and acting detrimental to the interest of the funds of the Nidhi.

22. It is the case of the prosecution that A-1 and A-2 are whole time Directors of the company and the other Directors have participated in the meetings conducted by the company on a regular basis. As regards the revision petitioner, it is admitted that he attended the meetings of the Board only twice, in which meeting, there was no resolution passed relating to the complaint in question. As mentioned above, there is no evidence made available to directly link the revision petitioner in to the day to day administration of the company, while so, impleading him is unnecessary.

23. The Honourable Supreme Court, in the decision rendered in the case of GHCL Employees Stock Option Trust vs. India Infoline Limited reported in (2013) 4 SCC 505, which was relied on by the learned Senior counsel for the revision petitioner in Para No.18 and 19, it was held as follows:-

> "18. From bare perusal of the order passed by the Magistrate, it reveals that two witnesses including one of the trustees were examined by the complainant but none of them specifically stated as to which of the accused committed breach of trust or cheated the complainant except general and bald allegations made therein. While ordering issuance of summons, the learned Magistrate concluded as under :-
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> > "The complainant has submitted that the accused Nos.2 to 6 are the directors of the company and accused No.7 is the secretary of the company and were looking after the day to day affairs of the company and were also responsible for conduct and business of the accused No.1 and some time or the other have interacted with the complainant.
> >
> > I have heard arguments on behalf of the complainant and perused the record. From the allegations raised, documents placed on record and the evidence led by the witnesses, prima facie an offence u/s 415, 409/34/120B is made out. Let all the accused hence be summoned to face trial under the aforesaid sections on PF/RC/Speed Post/courier for 2.12.2008."
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> 19. In the order issuing summons, the learned Magistrate has not recorded his satisfaction about the prima facie case as against respondent Nos.2 to 7 and the role played by them in the capacity of Managing Director, Company Secretary or Directors

which is sine qua non for initiating criminal action against them. Recently, in the case of M/s.Thermax Ltd. & Ors. vs. K.M. Johny & Ors. 2011 (11) SCALE 128, & ors. while dealing with a similar case, this Court held as under :-

"20. Though Respondent No.1 has roped all the appellants in a criminal case without their specific role or participation in the alleged offence with the sole purpose of settling his dispute with appellant-Company by initiating the criminal prosecution, it is pointed out that appellant Nos. 2 to 8 are the Ex-Chairperson, Ex-Directors and Senior Managerial Personnel of appellant No.1 - Company, who do not have any personal role in the allegations and claims of Respondent No.1. There is also no specific allegation with regard to their role

21. Apart from the fact that the complaint lacks necessary ingredients of Sections 405, 406, 420 read with Section 34 IPC, it is to be noted that the concept of 'vicarious liability' is unknown to criminal law. As observed earlier, there is no specific allegation made against any person but the members of the Board and senior executives are joined as the persons looking after the management and business of the appellant-Company."

24. In the above decision, it was held by the Honourable Supreme Court that for implicating a person as an accused, the prosecution must establish a prima facie case and in the absence of such evidence, the accused shall be relieved from facing the criminal trial. In the present case also, there is no prima facie case made out against the revision petitioner/A-12 warranting him to face the criminal trial.

25. Similarly, in the decision rendered in (B. Jagadeesh and others vs. The Deputy Superintendent of Police, EOW-II, Namakkal) reported in (2011 (2) Madras Weekly Notes (Criminal) 494, which was also relied on by the learned Senior Counsel for the petitioner, wherein in para No.23 and 24, it was held by this Court as follows:-

"23. Though, it is alleged that these accused also issued pamphlets inviting deposits from the public, promising higher rate of interest, absolutely there are no materials on record to make out such prima facie allegation. When a specific query was made to the learned Additional Public Prosecutor to point out the material on which basis this allegation has been made in the final report, the learned Additional Public Prosecutor is not in a position to demonstrate any such material record to make out a prima facie case. To be precise, as I have already stated, in respect of the 1st charge under Section 120-B r/w.420 and 409 of IPC, absolutely, there is no material on record and the learned Additional Public Prosecutor is not in a position to point out any material on record to substantiate this allegation. In respect of the constructive liability under Section 34 of IPC as I have already concluded, Section 34 has got no role to play in the matter and in respect of vicarious liability, as I have already stated, in so far as the Indian Penal Code is concerned, there can be no vicarious liability fastened on the Directors of the company for the offence committed by the company for want of any penal provision making the directors also vicariously liable for punishment. That is the view consistently taken by the Honourable Supreme Court in the judgments which I have referred to supra. Therefore, in my considered opinion, as of now, the prosecution of these petitioners is not maintainable.

24. Now coming to the scope of the inherent power of this Court under Section 482 of Cr.P.C., I have to necessarily refer to the judgment of the Honourable Supreme Court in Bhajanlal Vs. State of Hariyana reported in (1992) SCC Crl. 426 wherein the Honourable Supreme Court has enlisted certain circumstances under which criminal prosecution can be quashed by this Court by invoking the inherent jurisdiction. As per the said judgment, if the entire case is based on no material, allowing the case to proceed further will be a waste of judicial time and no purpose would be served in allowing the criminal prosecution to go further. On this ground, as held by the Honourable Supreme Court in the instant case, the proceedings are liable to be quashed in respect of these petitioners.

26. It is evident from the above decision that there can be no vicarious liability fastened on the Directors of the company for the offence committed by the company for want of any penal provision making the Directors also vicariously liable for punishment. This decision squarely applies to the case of the revision petitioner inasmuch as the charge against the revision petitioner is that A-1 and A-2 entered into a criminal conspiracy and sanctioned loan to A-16 and A-17, however, the revision petitioner, as one of the Directors did not questioned the manner in which loan was granted to A-16 and A-17. In other words, for an unilateral decision taken by the A-1 and A-2, the revision petitioner cannot be fastened with any vicarious liability.

27. Lastly, in the unreported decision relied on by the learned Senior Counsel for the petitioner rendered on 17.09.2010 in Crl.O.P. (MD) No. 1646 of 2010 etc., in the case of (T.S. Muthiah vs. The State through the Dy. Superintendent of Police, Economic Offence Wing, Tirunelveli) this Court observed in para Nos. 9 and 10

as follows:-

"9. A perusal of the order of the lower Court in the connected proceedings, reflects that it has arrived at the finding, on consideration of Clause 26 of the Bye-Laws, informing that all the Board members were responsible for the day-to-day activities of the Society, that such Directors being aware of the misappropriation done by the Secretary, had not taken any action against him, despite passing a resolution to suspend him and that it was the illegal omission in taking action against the Secretary that had permitted the continuance of offences till the year 2002. The contention made that the petitioners in the connected cases, have not been included in the original First Information Report, was also negated on the ground that those petitioners stand implicated after investigation in the case. The lower Court also has distinguished the quashing of proceedings against the Supervisor of the Society on the ground that in her case, no mens-rea in sharing the common purpose in swindling the amount was made out, nor was there anything to show that she had colluded with others in the perpetration of the crime.

10. Following the abovesaid decision of the Apex Court in Babaji Kondaji Garad v. Nasik Merchants Co-operative Bank Ltd., Nasik, (1984) 2 SCC 50, this Court is of the considered opinion that where the Tamil Nadu Co-operative Societies Act did not hold the Director responsible for the day-to-day affairs of the Society, such persons could not be held so liable on the basis of the Bye-Laws of the Society. The Bye-Laws in this case, i.e. Clause 26 cannot over- ride Section 84 of the parent Act, i.e. Tamil Nadu Co-operative Societies Act. The contention that it was for the Registrar to suspend or take action against the Secretary for the misappropriation committed and that the petitioner and other Directors could only recommend the same, deserves acceptance. When once it is seen that the Directors and the present petitioner as President, have nothing to do with the day-to-day affairs of the Society, the allegations of tampering with the records and misappropriation of funds would, in the facts of the case, stand scrutiny, if at all, only against the A.1 and A.2. This court in allowing the petitions for quash, under orders in Crl. O.P. Nos.4513, 4569, 4570 and 4576 of 2008 dated 04.11.2009, filed by persons similarly placed as the petitioner, has reasoned as follows:

"8. The specific case of the prosecution is that at the time of registering F.I.R., the Secretary, who corrected the challans and deposited a lesser amount and who informed the Sangam as if that he deposited the actual money collected from the members of the Society, for which the second accused, who is working as a Clerk in the Central Co-operative Bank aided the first accused. The records produced on behalf of the prosecution and the statements does not disclose any involvement of the present petitioners. As far as the offence under Sections 408 and 477(A) are concerned, Section 408 I.P.C. deals with criminal breach of trust and no stretch of imagination, the petitioner was entrusted with the money and Section 477 (A) I.P.C is concerned, he is not having any direct access to the records which were altered by the first and second accused concerned. As far as the offence under Section 109 I.P.C is concerned, the prosecution also has miserably failed to prove that there is an inducement by the present petitioner to commit the above said offences by the first and second accused concerned. 9. It is further stated that only due to the report given by the present petitioner, the case is registered and investigation conducted by the officers concerned.

28. It is evident from the above decision that where the Tamil Nadu Co-operative Societies Act did not hold the Director responsible for day to day affairs of the society, such persons could not be held so liable on the basis of the bye-laws of the society. When once it is seen that the Directors and President have nothing to do with the day to day affairs of the society, the allegations of tampering with the records and misappropriation of funds are untenable. This decision also applies to the facts of the case where the petitioner did not take part in the day to day affairs of the company and his implication in the criminal proceedings is bad in law.

29. Above all, in respect another case in Crime No. 1066 of 1999 relating to the very same transaction, the prosecution has filed Charge sheet before the learned XI Metropolitan Magistrate, Saidapet, Chennai and it was taken on file as C.C. No.12027 of 2003 in which the revision petitioner was not an accused. The charge sheet in C.C. No. 12027 of 2003 was filed on the basis of the very same defacto complainant namely V.R. Srinivasan in respect of non-payment of the matrutity amount. Though the learned Public Prosecutor submits that the charge sheet in C.C. No. 12027 of 2003 has nothing to do with the present cases, the fact remains that the revision petitioner and some other Directors were excluded from the purview of prosecution except A-1 and A-4. The Charge sheet in C.C. No. 12027 of 2003 relates to a different offence period with respect to the affairs of RBF Nidhi Company Limited, however, in this charge sheet, the revision petitioner was not shown as an accused. In Para No.38 of the Charge sheet in C.C. No. 12027 of 2013, it was clearly stated that "The investigation discloses that out of 15 Directors, who were in the Board of R.B.F. Nidhi Limited during 10-04-1995 to 22-10-1995, Directors A.K. Govindaraj, G. Rajalakshmi, V. Rajalakshmi, D. Thilagavathi, Jaganathan, Maragathavelu, J.L. Venkatesh, Muruga Bharathy, S. Jayaprakash, G. Vatchala and Kannan have not done any overtact like issuing cheques, except being the Directors of the company and they have not taken any part in day to day affairs relating to the transaction. Hence, the above said A.K. Govindaraj, G. Rajalakshmi, V. Rajalakshmi, D. Thilagavathy, Jaganathan, Maragathavelu, J.L. Venkatesh, Muruga Bharathy, S. Jayaprakash, S. Vatsala and Kannan, eventhough they are Directors of

Nidhi they are deleted from this police report...." Therefore, when it is admitted by the prosecution that the revision petitioner was not looking after the day to day affairs of the Nidhi in respect of a similar transaction for which charge sheet was filed, it will have a bearing in the present Criminal Revision Case for discharge of the revision petitioner/A-12.

30. For all the above reasons, I hold that the revision petitioner is entitled for discharge. Accordingly, the orders dated 05.09.2014 passed in Crl.R.C. No. 19 and 20 of 2011 on the file of the learned II Additional Sessions Judge, Chennai are set aside and the orders dated 25.04.2008 passed by the learned Chief Metropolitan Magistrate, Egmore, Chennai in Crl.M.P. Nos. 496 and 280 of 2008 in C.C. Nos. 11459 and 11457 of 2002 respectively, discharging the revision petitioner/A-12 are restored. Resultantly, both the Criminal Revision Cases are allowed. Consequently, connected miscellaneous petition are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The II Additional Sessions Judge
   Chennai

2. -Do- Thro The Principal Sessions Judge,
   Chennai.

3. The Chief Metropolitan Magistrate
   Egmore, Madras.

4. The Deputy Superintendent of police,
   EoW-11/HQ
   Chennai 600 040

5. The Public Prosecutor,
   High Court Madras.

+1cc to Public prosecutor sr.no.36284.

Crl.R.C. Nos. 1369 & 1370 of 2014

km[co]
srg 04.08.2015